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April 28, 2010

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 9, 2009

Case Number: TSO-0869

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." 1/ As explained below, it is my decision that the individual should not be granted an access authorization. 2/

I. BACKGROUND

1/ Decisions issued by the Office of Hearings and Appeals (OHA), with names and other personal identifying information deleted, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine at <http://www.oha.doe.gov/search.htm>.

2/ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The individual has worked for a Department of Energy (DOE) contractor since October 2007. The individual's employer requested that he be granted an access authorization and, in April 2008, the individual submitted a Questionnaire for National Security Positions (the 2008 QNSP) to the DOE. DOE Exhibit 6. An Office of Personnel Management (OPM) investigator conducted a background investigation (BI) of the individual in 2008. Based on information that the individual reported on his 2008 QNSP and information contained in the BI, the Local Security Office (LSO) conducted a Personnel Security Interview with the individual in November 2008 (the 2008 PSI). DOE Exhibit 7. In addition, the individual was evaluated in August 2009 by a DOE-consultant psychologist (the DOE-consultant Psychologist), who issued a Psychological Evaluation Report (the "2009 Psychological Report") setting forth his conclusions and observations. DOE Exhibit 8.

In October 2009, the LSO issued a Notification Letter to the individual, together with a statement setting forth the information that created a substantial doubt about the individual's eligibility to hold a DOE security clearance (Enclosure 1). In Enclosure 1, the LSO finds that the DOE-consultant Psychologist has diagnosed the individual as suffering from untreated Alcohol Dependence, a diagnosis that raises security concerns under the provisions of 10 C.F.R. § 710.8(j) (Criterion J). The LSO finds that the DOE-consultant Psychologist's diagnosis indicates that the individual's untreated alcohol dependence is a mental condition which causes or may cause a significant defect in judgment or reliability. This raises security concerns under the provisions of 10 C.F.R. § 710.8(h) (Criterion H).

The LSO refers to the following information regarding the individual's use of alcohol:

- (1) In August 2007, he was arrested for DUI with a blood alcohol reading over .20 after he consumed 15-16 beers, and was required to take a Driver Intervention Program;
- (2) In the Fall of 2006, he admitted to getting drunk with his buddies on the Las Vegas Strip and subsequently enrolled in the Air Force Drug and Alcohol Program as a self-referral;
- (2) In June 2006, he was arrested for Disorderly Intoxication after drinking seven to eight beers and almost getting into a fight;
- (3) During April 2003, he was found drunk while on military duty as a SERE (Survive, Evade, Resist, Escape) Instructor with a blood alcohol reading of .246; and

(4) In January 2002, he was arrested for Driving Under the Influence of Illegal Drugs, which he stated took place when he was involved in a traffic accident after drinking two glasses of wine.

In addition, the LSO finds that the individual's admitted lies about his behavior while serving as an instructor in the military, his ongoing refusal to seek treatment for his alcohol problems, and his ongoing risk-taking activities, willingness to ignore rules, and failure to accept responsibility for his undesirable behavior indicate that he has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy, thereby raising a security concern under the provisions of 10 C.F.R. § 710.8(1) (Criterion L). Specifically, the LSO finds that:

(1) In May/June 2006, while serving as an instructor in the military, he had an illegal affair with a female married student and lied about it. He received an Article 15 non-judicial punishment from the Air Force for this conduct; and

(2) In 2007, he was found to be Absent Without Leave from the military after he admitted that he lied in order to extend his home leave. He was offered an "Other Than Honorable" Chapter 13 Discharge from the military in lieu of a Court Martial, and he accepted it.

Enclosure 1 of Notification Letter, citing 2008 BI, 2008 PSI and 2009 Psychological Report. DOE Exhibit 2.

The individual requested a hearing (hereinafter "the hearing") to respond to the concerns raised in the Notification Letter. On December 10, 2009, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter in February 2010, I received testimony from seven persons: the individual, his supervisor, his co-worker/Alcoholics Anonymous sponsor (the AA Sponsor), his girlfriend, his cousin, his sister/co-worker, and the DOE-consultant Psychologist.

II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of

affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing*, Case No. VSO-0002 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing*, Case No. VSO-0005 (1995), *aff'd*, Case No. VSA-0005 (1995). See also 10 C.F.R. § 710.7(c).

III. ANALYSIS OF TESTIMONY AND FINDINGS

A. Criteria H and J Concerns

1. Diagnosis of Alcohol Dependence

In his testimony at the hearing, the DOE-consultant Psychologist did not revise his diagnosis of Alcohol Dependence, and stated that the individual should be actively engaged in recovery activities to avoid a future relapse. TR at 198. The individual admitted that he has had the problems with alcohol that are documented in the Notification Letter, and that he now considers himself to be an alcoholic. TR at 158, 160, 169. The individual did not provide any documentary or testimonial evidence to refute the diagnosis of Alcohol Dependence. In addition, I have reviewed the information in the record of this proceeding concerning the individual's history of alcohol consumption and conclude that there is ample support for this diagnosis. I therefore turn to the issue of whether the individual has demonstrated rehabilitation or reformation from this condition.

2. *Rehabilitation and Reformation*

The individual testified that he last consumed alcohol at a Halloween party on October 31, 2009, when he consumed three or four beers and became somewhat intoxicated. TR at 149, 173-174. The individual's testimony in this regard was corroborated by his girlfriend (TR at 96-113), his AA Sponsor (TR at 52, 114), his sister (TR at 142, 147), his cousin (TR at 125-126, 129) and his supervisor (TR at 79-81, 87). Although the individual lives alone, he spends most week nights and weekends with his girlfriend and her children, who live on an adjoining property. Her testimony indicates that the individual practices sobriety in his home life, and is supported by the testimony of the individual's sister and his cousin. The individual's supervisor testified that there has been no alcohol consumption by the individual in the workplace, and the individual's AA Sponsor testified that the individual is actively engaged in AA discussions and group meetings, and appears committed to maintaining his abstinence. I find this corroborative evidence to be adequate for the claimed three-month period. Accordingly, I conclude that the individual has established that he last consumed alcohol on October 31, 2009, and that as of the date of the hearing has been abstinent from alcohol for three months.

The individual testified that he received the DOE-consultant Psychologist's Report in October 2009, and the analysis in that report helped him to realize that he has a problem with alcohol. TR at 159. He stated that he asked a friend/co-worker to sponsor him in AA, and that the friend/co-worker became his AA Sponsor on November 6, 2009. TR at 149, 158. He testified that on that date, the AA Sponsor provided him with AA literature, and they began to have conversations about the AA program. TR at 186. The individual testified that in December 2009, he began to attend a weekly AA meeting with his AA Sponsor, and that in December 2009 and January 2010 he attended seven meetings. See Individual's AA Attendance Sheets, designated Subject Exhibits A and B. The individual testified that in the November/December 2009 time frame, he came to the realization that he cannot maintain sobriety on his own, and needs prayer and support to do it. TR at 184-186. He stated that he talks to his AA Sponsor daily. TR at 168-169, 185.

The testimony of the AA Sponsor confirmed the individual's testimony concerning his AA activities. TR at 12-54. In addition, the AA Sponsor stated that he and the individual are now working on AA Step Four, and that the individual is sharing the gist of his past problems with alcohol and his military service without providing specifics. TR at 48. He testified that the individual's steady girlfriend and her two children have established a family

bond that serves as an additional safety net for the individual's sobriety. TR at 58.

The individual stated that his social contacts have changed since he began a relationship with his girlfriend in the summer of 2009, and since he committed himself to sobriety. TR at 150. He stated that, prior to abstaining from alcohol, he avoided consuming alcohol around his girlfriend's children, and that he wants to maintain his current sobriety so that he can be a good role model for them, for his family, and for his community. He stated that he rarely goes out with his old friends, and they know that he is not going to drink. TR at 179-181. The individual's girlfriend corroborated these assertions in her testimony. TR at 91-113.

The individual testified that he now has a commitment to sobriety, and that he intends to stay sober even if he loses his job, because his life is better sober. TR at 171-172. The individual testified that he prefers to attend AA meetings with his AA Sponsor, but that he plans to begin attending a Thursday night meeting at his local Veterans Administration (VA) hospital. TR at 188. He stated that he is working with the hospital staff to find a substantial outpatient treatment program that he can attend. TR at 170.

After hearing the evidence presented by the individual and his witnesses, the DOE-consultant Psychologist testified that at the time of his August 2009 evaluation, he believed that the individual was in denial about his alcohol problem, and exhibited a shortfall in judgment and recognition concerning his vulnerability to alcohol. TR at 194-195. He stated that the individual's ninety days of sobriety, attendance at weekly AA meetings, and relationship with his AA Sponsor are certainly a "good start" in dealing with his alcohol problem. He also testified that he is pleased that the individual has found his current life situation back in his family with people who clearly are invested in lifestyles that are appropriate. TR at 196, 201-202. However, he stated that it was too early to know if the individual will be able to identify in a substantive way with the need for a recovering lifestyle, or if he's just doing this to look good and to keep his job. TR at 196.

The DOE-consultant Psychologist stated that in his report, he recommended that the individual needed to establish sobriety supported by intensive outpatient therapy and participation in AA for not less than two years in order to establish rehabilitation from his alcohol dependence. He testified that the individual's statements at the hearing about being reluctant to share his alcohol history and life problems reinforced this opinion. He

stated that the individual needs to be able to talk candidly with the people in his life who are there to support him, especially his AA Sponsor. TR at 198. He testified that the individual should resist the temptation to become a leader in AA because it will keep him from realizing his extraordinary vulnerability to relapse over the next couple of years. TR at 199-200. He stated that what keeps a highly intelligent person such as the individual from drinking is humility that recognizes this vulnerability, and the wisdom to recognize that he needs to be with people who understand that vulnerability. He concluded that what the individual has done so far is necessary but not sufficient to establish rehabilitation from his alcohol dependence. TR at 206-207.

After reviewing the entire record of this proceeding, I conclude that the individual has not mitigated the DOE's concerns arising from his diagnosis of alcohol dependence. See Guideline G, Paragraph 23 of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (*Revised Adjudicative Guidelines*). I agree with the DOE-consultant Psychologist's expert opinion that the individual must commit himself to sobriety activities such as alcohol counseling as well as AA for at least two years in order to establish a pattern of abstinence from alcohol and to achieve a low future risk of relapsing into alcohol dependence. See, e.g., *Personnel Security Hearing*, Case No. TSO-0726 (2009) (Hearing Officer gave deference to expert medical opinion in finding that rehabilitation was not yet established). In this instance, my positive assessment of the individual's demeanor and of the evidence presented at the hearing convinces me that the individual is highly committed to maintaining his current abstinence, and that he has developed a good relationship with an AA Sponsor that should assist him in developing the personal insight and skills to maintain abstinence and in understanding the benefits of participating in a sobriety program such as AA. I also find that his current relationships with his girlfriend and with his family members are supportive of his sobriety.

Currently, however, the individual has maintained abstinence from alcohol for only three months, and has attended only seven AA meetings during that period. While the individual reports that he is attempting to locate an intensive outpatient counseling program, he has not yet accomplished this. I agree with the DOE-consultant Psychologist that this brief period of abstinence and limited recovery activity does not establish that the individual's long-term prognosis indicates a low risk for relapsing into alcohol

dependence. ^{3/} Accordingly, I find that the individual has not yet resolved the DOE's Criteria H and J concerns.

B. *Criterion L Concerns*

As discussed above, the LSO finds that the individual's ongoing refusal to seek treatment for his alcohol-related legal problems, his admitted lies about his behavior while serving as an instructor in the military, and his ongoing risk-taking activities, willingness to ignore rules, and failure to accept responsibility for his undesirable behavior raise concerns about his honesty and reliability under Criterion L.

I find that the individual's recent admission that he is an alcoholic and his efforts to maintain sobriety and to rehabilitate himself from alcohol dependence are positive steps towards resolving the DOE's concerns about the individual's conduct in failing to address his past alcohol-related legal problems. However, the DOE-consultant Psychologist opined at the hearing that it is too early in the individual's recovery effort to determine whether the individual will be successful in identifying in a substantive way with the need for a recovering lifestyle. In light of this opinion of a mental health professional, I find that the individual has not yet established that he has addressed his past alcohol-related behavior in an effective manner. See Revised *Adjudicative Guidelines*, Guideline I, ¶ 28(b), 29(c).

With respect to the individual's lies and improper behavior while serving as an instructor in the military in 2006 and 2007, the individual admits that he acted with poor judgment in those circumstances. He asserts that his judgment has improved since then, as evidenced by the life choices that he has made in choosing not to consume alcohol, and in demonstrating that he appreciates his job, his friends, and his family. TR at 163. His supervisor, his AA Sponsor, his girlfriend, and his relatives all testified that the individual is honest, reliable and trustworthy in his interactions with them. His supervisor testified that since starting work in the DOE facility in late 2007, the individual has

^{3/} In this regard, I note that medical professionals often find that at least one full year of abstinence and alcohol treatment is necessary to establish rehabilitation from alcohol abuse or dependence. See *Personnel Security Hearing*, Case No. TSO-0589 (2008). In the present case, with only three months of sobriety at the time of the hearing, the individual has not yet dealt with all of the seasonal activities and stressors that can trigger relapses.

been his best team player and very respectful of his chain of command. He also stated that the individual demonstrates good character in his professional and in his private life, and that he participates in community charity events. TR at 79-89. The individual's AA Sponsor testified that the individual is a good friend who is polite and always willing to help him with family projects. TR at 42-44. His girlfriend testified that he has never behaved in an inappropriate manner with her or with her children. TR at 106-110. His sister and cousin assert that the individual is trustworthy and very supportive of his family. TR at 120-146.

In his testimony, the DOE-consultant Psychologist stated that he continues to be concerned about the individual's past behavioral pattern of acting opportunistically without regard for legal or social requirements. He testified that the individual's recent efforts at organizing charity benefits may be heartfelt, but they do not mitigate his judgment and character issues. The DOE-consultant Psychologist testified that the individual is "sufficiently narcissistic" that it is "enormously easy" for him to be "whatever he needs to be to get the most positive attention and the most options and benefit." TR at 204-205. He stated that the individual's recovery from alcohol dependence will require him to cultivate humility and an appreciation for dependence on support from others, and that these qualities will reduce his tendency to commit anti-social acts. TR at 205-205.

I find that the record in this proceeding indicates that the individual's behavior in the workplace since October 2007 and in his personal life in recent months has demonstrated good judgment, reliability, and honesty. However, in light of the DOE-consultant Psychologist's expert testimony, I find that the individual has not yet shown that, in the opinion of a mental health professional, that his previous instances of dishonesty, poor judgment, and disregard for legal requirements have a low probability of recurrence. See *Revised Adjudicative Guidelines, Id.* I accept the DOE-consultant Psychologist's opinion that the individual continues to be at risk for unusual conduct until he has achieved the personal insights and social support that are necessary for his rehabilitation from his alcohol dependence. Accordingly, I find that the individual has not mitigated the LSO's Criterion I concerns.

IV. CONCLUSION

For the reasons set forth above, I find that the individual suffers from Alcohol Dependence subject to Criteria H and J, and that his past behavior and statements have raised concerns under

Criterion L. Further, I find that this derogatory information under Criteria H, J and L has not yet been mitigated by sufficient evidence of rehabilitation and personal insight. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that granting him an access authorization would not endanger the common defense and would be clearly consistent with the national interest. It is therefore my conclusion that the individual should not be granted an access authorization. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: April 28, 2010